incurred in subsequent proceedings and for which no order in favour of the respondent had been made. The application is allowed with costs.

Order accordingly.

Solicitors: *Sukumar & Teo; Lim Ganesh & Liu.*

Reported by *PS Ranjan*

The 'Arcadia Spirit'

Esso Singapore Pte Ltd v 'Arcadia Spirit' (Owners of)

HIGH COURT (SINGAPORE) – ADMIRALTY IN REM NO 5 OF 1988
GRIMBERG JC
19 JANUARY 1988

Shipping – Arrest of ship – Release of vessel against provision of letter of guarantee by P & I Club – Rules of the Supreme Court 1970, O 70 r 12(4)

The plaintiff in admiralty in rem proceedings arrested the defendant's vessel, the 'Arcadia Spirit', to enforce their claim for damage done to their berth. Pursuant to O 70 r 12(4) of the Rules of the Supreme Court 1970, the defendant applied for an order for the release of the arrested vessel against the provision of a letter of guarantee by the Japan P & I Club.

Held, allowing the application: (1) The court had discretion under O 70 r 12(4) of the Rules of the Supreme Court 1970 to order the release of the vessel against the provision of a P & I Club letter of guarantee.

(2) The vessel should be released against a letter of guarantee by the Japan P & I Club for the value of the vessel.

Case referred to
1 *The 'Pacific Charger'* unreported New Zealand 1981 Court of Appeal case (folld). See Appendix at p 263.

Legislation referred to
Rules of the Supreme Court 1970 O 70 rr 12(4), 22

M Karthigesu (A Thambiyah with him) for the plaintiffs.
GP Selvam (Kenneth Tan with him) for the defendants.

[*Background Facts:* The plaintiff commenced admiralty proceedings and caused the 'Arcadia Spirit' to be arrested to enforce a claim for damage and/or loss to their oil loading berth at Pulau Ayer Chawan Refinery, Singapore and their wharf facilities in consequence of alleged navigation and/or management of the 'Arcadia Spirit'. They claimed security for the release of the said vessel in the sum of $50 million and in the form of a letter or a bank guarantee.

The defendant offered security in the form of a letter of undertaking to be issued by the Japan Ship Owners' Mutual Protection and Indemnity Association (hereinafter referred to as the 'Japan P & I Club') which was the insurer of the owners of the 'Arcadia Spirit' in respect of owners' liability for the plaintiff's claim.

The amount of guarantee offered was for the sum of $19.7 million on the ground that the plaintiff was not entitled to security in excess of the value of the vessel arrested. The plaintiff refused to accept the defendant's offer and insisted on a bank guarantee or a bail bond.

The defendant applied by notice of motion to the court for the release of the vessel pursuant to RSC 1970, O 70 r 12(4) on the ground that a letter of guarantee by the Japan P & I Club for the value of the vessel was satisfactory and sufficient security to which the plaintiff is entitled. The defendant contended that the Japan P & I Club was a reputable and internationally recognized P & I Club. Its letter of undertaking was accepted by international maritime communities including governments and accordingly it was sufficient and satisfactory security for shipowners' liabilities.

The plaintiff resisted the application on the ground that the security for the release of a ship arrested in admiralty was a matter of agreement between the parties. The court's jurisdiction to order the release of a ship was limited to circumstances when the defendant filed a bail bond as provided in the Rules of the Supreme Court 1970. The plaintiffs furnished a valuation of the vessel at US$13 million. Other submissions appear in the oral judgment of Grimberg JC.]

Grimberg JC (delivering oral judgment): I take the view that O 70 r 12(4) gives me the discretion to order the release of this vessel against the provision of a P & I Club letter of guarantee. P & I Clubs are now acknowledged as being part and parcel of the maritime industry. The unreported New Zealand case, *'Pacific Charger'*,[1] to which Mr Selvam referred, establishes that a Club guarantee has been considered acceptable security by the court in New Zealand. In that case the scope of the New Zealand equivalent of our O 70 r 12(4) was considered. It is obvious, too, from the textbooks, that Club security has become acceptable as a matter of course, when negotiations for security take place outside the rules of court.

There is admittedly a wrinkle, a very important wrinkle, in this case in that here we are dealing with a proposed letter of guarantee to be furnished by a Club which has no presence or assets here, and which resides in a non-Commonwealth and non-common law jurisdiction. Therefore, theoretically, there could be an enforcement problem. However, it seems to me that to allow that possibility to affect my mind would be to adopt a wholly negative approach. I prefer to proceed upon the assumption that the Japan Club – whose guarantees (as the evidence shows) are acceptable to a number of governments, including our own – that such a club which would stand to lose its international reputation were it to default on a guarantee – would fulfil its obligations with honour. Accordingly, I am inclined to order the release of the vessel in consideration of the provision of a letter of guarantee of the Japan Club in terms to be agreed.

I am faced, having made that decision, with the other difficulty arising from the lack of consensus on quantum, coupled with the urgency of the matter. I was

informed by Mr Selvam this morning that the vessel is seaworthy, and but for the fact that she is currently under arrest, would sail. I had in mind the possibility of adjourning this application with liberty to restore, so as to enable either the plaintiff or defendant to apply for an order of appraisal under O 70 r 22. However, that would obviously take time, to the detriment of the defendant. I am also influenced against this course by the fact that Mr Selvam has indicated to me that the defendant would be prepared to procure a guarantee of the Club in the sum of $26 million, which is substantially the security the plaintiff wants, although it is required by the plaintiff in another form.

As to quantum therefore, I have on the one hand the valuation of approximately $20 million given by Mr Peirera, who is a surveyor recognized by this court. That figure is challenged by the plaintiff, who has put forward the valuation of another surveyor who is less well-known in this jurisdiction, but those constituent companies have antecedents with which I cannot possibly take issue.

I have to consider the merits of the two valuations. I am impressed by the point made by Mr Karthigesu concerning the fact that Mr Peirera's valuation was arrived at on a forced sale basis. I am not persuaded that this is the basis upon which the valuation ought to have been prepared, and I am inclined to prefer the valuation of Mr Bando, the defendant's valuer.

I am therefore going to make the following orders:

(1) an order in terms of prayer 1, abridging the time for service of this application;
(2) an order in terms of prayer 2, save that the figure will read $26 million instead of $19.7 million;
(3) there will be an order in terms of prayer 3 of the application;
(4) the costs of this application will be reserved.

There will be liberty to either party to apply.

I hope that the parties will be able to agree on the terms of the guarantee. Certainly you are welcome to come back to me if you think I can assist in any way.

Order accordingly.

Solicitors: *Cooma Lau & Loh & M Karthigesu*; *Drew & Napier.*

Reported by *Al-Mansor Adabi*

APPENDIX*

The Ship 'Pacific Charger'

General Motors New Zealand Ltd & Ors v The Ship 'Pacific Charger'

COURT OF APPEAL (NEW ZEALAND) – CA 101/81
COOKE J (PRESIDING), SOMERS & MAHON JJ
30 JULY 1981

Shipping – Release of vessel – Bond by protection and indemnity association – Stay of release – Admiralty Rules 1975, r 17(4)

Civil Procedure – Stay of proceedings – Stay of release of ship pending appeal granted upon conditions – Appeal against one of the conditions

GP Barton (*BM Rudkin* with him) for the appellants.
CR Carruthers for the respondent.

Cooke J (delivering the judgment of the court): These are two appeals relating to the ship 'Pacific Charger'. The first is an appeal from a decision of Savage J in the High Court on 24 July 1981 ordering the release of the vessel under certain terms under r 17(4) of the Admiralty Rules 1975. It is common ground that NZ$7,500,000, the amount of the bond fixed by the judge, was appropriate as to amount. The only issue is whether he was wrong to direct that the bond be given by the Britannia Steam Ship Insurance Association Ltd, a protection and indemnity association based in London.

Rule 17(4) gives the court a discretion. We accept Mr Barton's submission that it must be exercised in accordance with the principles of admiralty law and within the spirit and intention of the Admiralty Rules.

The judge's reasons for the way in which he exercised his discretion were set out in writing and made available on 27 July 1981. Having considered those reasons and listened to the argument presented by Mr Barton today, all members of the court are satisfied that there was no error in the judge's approach. In our view he exercised his discretion in accordance with the intention and spirit of the rule, nor has there been shown to be any principle of admiralty law with which his decision could be said to be in conflict. He was well entitled to accept this long-established organization of high international standing as a reliable bondsman for $7,500,000 in New Zealand currency. The new evidence tendered to this court and admitted de bene esse does not alter our view. We would not be justified in disturbing the admirable judgment of Savage J and that appeal will be dismissed.

The second appeal is subsidiary. After the decision of the judge already referred to, the plaintiffs applied to him for a stay of proceedings, that is to say a stay of the release of the ship, pending an appeal to this court. Savage J granted the stay upon certain conditions. The plaintiffs, although they thereby obtained the benefit of prolonging the arrest of the ship in New Zealand for a time, now seeks to appeal against one of the conditions; namely, the condition that the plaintiffs give security to the registrar in a form to be settled by him that they will pay, in the event of the appeal failing, the costs that arise in

* This appendix is included as this important NZ Court of Appeal decision does not appear to have been reported elsewhere. We are grateful to Mr GP Selvam for making a copy of this case available to us.